IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 320 of 1991

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYABEN WD/O S.H. SHAH & 4 - Appellant(s)
Versus
KAILASHBEN MAGANBHAI PATEL & 1 - Respondent(s)

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Appearance :
MR HM PARIKH for Appellant(s) : 1 - 5.
NOTICE SERVED for Respondent(s) : 1,
MR RAJNI H MEHTA for Respondent(s) : 2,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 24/09/2007

ORAL JUDGMENT

This is the Appeal preferred under Section 110 of the Motor Vehicles Act (hereinafter referred to as, **"the Act")** by the claimants in Motor Accident

Claim Petition No.550/1985 against the judgment and order dated 31st March, 1990 passed by the Motor Accident Claims Tribunal (Auxiliary), Nadiad (hereinafter referred to as, **“the Tribunal”**).

The appellants-claimants are the heirs of one Subhashchandra Hiralal Shah, the deceased. The said Subhashchandra Shah, on 24th March, 1985 while driving the offending vehicle, a scooter bearing registration no.GUH-6784, met with an accident and died of the head injuries suffered in the said accident. According to the statement made before the police by the pillion rider one Rasiklal, the deceased Subhashchandra Shah while driving the offending scooter, slipped from the scooter and suffered head injuries. The deponent Rasiklal suffered some minor injuries. The claimants lodged claim for compensation in the sum of Rs.2 lakhs against one Kailashben, the owner of the offending scooter, and the Insurance Company. According to the claimants, the accident took place on account of bursting of the tyre of the scooter. The scooter slipped on account of the tyre burst causing the accident in question.

The claim was contested by the Insurance Company. According to the Insurance Company, the deceased Subhashchandra was the real owner of the offending scooter. The accident in question had occurred on account of his own negligence. The claimants were, therefore, not entitled to the compensation as claimed for. In support of the said defence, the Insurance Company produced statement Exh.52 given by the respondent no.1 Kailashben to the effect that she had purchased the offending scooter in the year 1983 and that before the date of the accident she had sold it to the deceased Subhashchandra.

The Tribunal did believe that the respondent no.1 Kailashben had sold the offending scooter to the deceased Subhashchandra before the date of the accident. The deceased Subhashchandra was, therefore, the real owner of the offending scooter. The accident in question occurred on account of the negligence of the deceased Subhashchandra. The claimants were, therefore, not entitled to compensation as claimed

for. The claim petition was accordingly rejected. Feeling aggrieved, the claimants have preferred the present Appeal.

Before this Court, the claimants sought permission to confine their claim to Rs.15,000=00 as envisaged by Section 92A of the Act. By order dated 9th April, 1991 (Coram: N.B.Patel and B.J.Shethna, JJ.), the Court permitted the claimants to restrict their claim to Rs.15,000=00, under Section 92A of the Act.

Mr.Parikh has submitted that Section 92A of the Act is based on the principle of 'no fault liability'. Irrespective of the negligence on the part of the driver, the claimants are entitled to a compensation in the sum of Rs.15,000=00. In the submission of Mr.Parikh, whether the accident occurred on account of the tyre burst or on account of the negligent driving by the deceased, the claimants are entitled to a compensation in the sum of Rs.15,000=00.

Mr.Mehta has contested the Appeal. He has submitted that the liability to pay compensation under the Act is based on the death or injury suffered by a person on account of the negligence. The deceased himself was the owner of the offending scooter and the accident occurred on account of his negligence. The claimants cannot have a right to compensation against the owner or, for that matter, the Insurance Company.

The question really is, whether on the date of the accident the deceased was the owner of the offending scooter. According to the claimants, it was the respondent no.1 Kailashben who was the owner of the scooter and that the deceased had borrowed it from the said Kailashben. In support of this claim, Mr.Parikh has relied upon the oral evidence given by the above referred Rasiklal, the pillion rider. The said Rasiklal, in his evidence, did say that the offending scooter was borrowed from the said Kailashben. In support of its defense, the Insurance Company has relied upon the evidence given by its Investigating Officer (Exh.51) and the statement

(Exh.52) of the said Kailashben recorded by the said Investigating Officer. In the statement (Exy.52) given on 12th October, 1988 before the Investigating Officer, the said Kailashben made a categorical statement that the offending scooter was purchased by her but it was never used by her and that she had sold it to the deceased Subhashchandra before the date of the accident.

The insurance policy has been produced on record at Exh.30. According to the details recorded in the said policy, the proposal for insurance was made on 10th January, 1985 and the policy in question was issued on 18th February, 1985. Though, different versions appear on record, I am of the opinion that the said Kailashben had purchased the offending scooter in or around the month of January, 1985. Though, she admitted her signature and the signature of her brother, she retracted from the statement (Exh.52). According to her, the signatures were taken on a blank sheet of paper. In my opinion, the Tribunal has rightly appreciated the evidence and has rightly believed the statement (Exh.52). I am of the

opinion that the Tribunal has rightly held that the deceased Subhashchandra was the real owner of the offending scooter and that the accident had occurred on account of his own negligence. The claim for compensation made by the claimants was, therefore, not sustainable.

For the aforesaid reasons, the Appeal is dismissed with cost.

(Ms. R.M.Doshit, J.)

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